SECOND DIVISION
September 18, 2012

No. 1-11-0676

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 13935
	)	
GLIANCE VAUGHN,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE QUINN delivered the judgment of the court.
Presiding Justice Harris and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held*: (1) Any error regarding the court's reliance on the PSI amendment was not reversible and, (2) the court properly sentenced defendant to a mandatory supervised release term of three years.

¶ 2 Following a jury trial, defendant Gliance Vaughn was convicted of aggravated driving under the influence (DUI). The court found that the aggravated DUI offense was a Class 1 felony based on four purported DUI convictions and sentenced defendant as a Class X offender based on his other criminal history to 10 years in prison with three years of mandatory supervised release (MSR). Defendant now appeals, contending that during the sentencing hearing, the State

failed to establish the requisite number of prior DUI commissions to classify his offense as a Class 1 felony. Defendant also contends that the court should not have imposed a three-year term of MSR. We affirm.

¶ 3 Chicago police officers initiated a traffic stop around 1:50 a.m. on July 7, 2010, after observing defendant driving a Cadillac Escalade with a missing front headlight and no license plate. After approaching the vehicle, one of the officers observed that defendant had an open bottle of alcohol between his legs and appeared to be intoxicated. Defendant was arrested and eventually charged with, *inter alia*, aggravated DUI (Count 1), in which the State included notice that it would be seeking to sentence him as a Class 1 offender due to the fact that he had committed four previous DUIs. See 625 ILCS 5/11-501(d)(2)(D) (West 2010). The jury found defendant guilty of aggravated driving under the influence.

¶ 4 At sentencing, the court asked if the parties wished to amend defendant's presentencing investigation report (PSI). Defendant's counsel then proceeded to offer corrections, including changes to defendant's educational and work background, prescription medications, records of psychiatric treatment, military service and receipt of public aid. The State then offered its own amendments to the PSI, stating:

> "the only thing that's missing there, there are some other driving offenses. On March 12, 2002, a misdemeanor 603 conviction. That was the arrest date. He did receive a conviction for it. A month later on April 22, 2002, another arrest for 603. He also received a conviction for that. And on April 29, 2002, he was arrested for a misdemeanor DUI that resulted in a conviction, thus leading to four *** DUI convictions in total."

The Chicago police criminal history report attached to the PSI included defendant's April 29, 2002 arrest for not driving on the right side of the road, "solicitation" of DUI and "solicitation" of driving on a suspended license. The criminal history report did not include a conviction or other disposition regarding a DUI charge. Next, the State noted defendant's other past convictions as listed in the PSI for aggravated robbery, robbery and unauthorized use of a weapon by a felon. Defense counsel did not object to any of the State's amendments to defendant's PSI, nor the record of defendant's other convictions. The court noted that defendant qualified for a mandatory Class X sentence, and defense counsel agreed.

¶ 5 Before imposing the sentence, the court observed:

> "I have considered the Pre-sentence Investigation [*sic*] and information contained in there, I have considered the facts and circumstances of this case. I am aware of the statutory, aggravating and mitigating factors. I am aware of your potential for rehabilitation."

It then again noted that defendant was eligible to be sentenced as a Class X offender and that Count 1 was a Class 1 felony. Finally, it noted that defendant's "illness" was "not going away," defendant created a "danger for all society," and, while defendant was incarcerated, he would not be intoxicated nor pose a danger to society. The court then sentenced defendant to 10 years in prison.

¶ 6 On appeal, defendant first agrees that he had three prior DUI convictions, which would classify the instant offense as a Class 2 felony. (625 ILCS 5/11-501(d)(2)(C)(West 2010)). Defendant only challenges the State's oral representation during the sentencing hearing that he had committed a fourth prior DUI violation (April 29, 2002), which would classify the instant offense as a Class 1 felony. Defendant argues that the State merely noted the date of the arrest

and that there had been a conviction, but did not provide any other details or written proof, relying on cases where trial courts considered written documentation of prior convictions to be reliable. See, e.g. *People v. DiPace*, 354 Ill. App. 3d 104, 115 (2004); *People v. Mondhink*, 194 Ill. App. 3d 806, 809-11 (1990). The State counters that it need not prove defendant's prior convictions beyond a reasonable doubt during sentencing, and that the court may consider all reliable and relevant evidence of past offenses, not just that which is written. See *People v. Laskowski*, 287 Ill. App. 3d 539, 543 (1997).

¶ 7 A review of the extremely lengthy criminal history sheet of defendant reveals at least six prior arrests for DUI. Three of these arrests resulted in prison sentences for DUI. The supplemental common law record contains an "Alcohol and Drug Evaluation Report Summary," dated November 15, 2010. One of the entries provides: "Specify any other prior alcohol and / or drug related driving *convictions* by type and date of arrest as reported by the offender and /or indicated on the driving records." (Emphasis added). This is followed by "Prior DUI's 02, 01, 05, 06, 07, 09." This report concludes: "The information I have provided for this evaluation is true and correct. I have read the information contained in this alcohol and drug evaluation and its recommendations have been explained." This language appears directly above defendant's signature.

¶ 8 Defendant correctly acknowledges that this issue was not preserved but seeks review under the plain error doctrine. Defendant argues that the alleged sentencing error is so serious that he was denied a substantial right. See *People v. Burrage*, 269 Ill. App. 3d 69, 77 (1994)("sentencing issues are regarded by courts as matters affecting a defendant's substantial rights and, thus, have been excepted from the doctrine of waiver").

¶ 9 Defendant has not, and cannot, establish plain error because he was properly sentenced as a Class X offender whether his present aggravated DUI was classified as a Class 1 or Class 2

felony. Defendant concedes that his extensive criminal background mandated his status as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2010)) and, therefore, was subject to a sentencing range of 6 to 30 years in prison (730 ILCS 5/5-4.5-25(a)(West 2010)). The 10-year prison term imposed by the trial court is clearly at the low end of the Class X sentencing range.

¶ 10 The record refutes defendant's speculative argument that the court may have imposed a more lenient sentence if his present offense was a Class 2 rather than a Class 1 felony. Defendant bases his position on the principle that a new sentencing hearing is required if the trial court misapprehends the applicable minimum sentence. See *People v. Hurley*, 277 Ill. App. 3d 684, 687 (1996). Here, the applicable minimum sentence was six years regardless of the classification of the instant aggravated DUI offense. Defendant's unchallenged criminal history included aggravated robberies, robbery, unlawful use of a weapon by a felon, driving on a revoked or suspended license, and three undisputed prior DUI convictions. Moreover, the record establishes that the court was apprised of and evaluated mitigating factors, including defendant's potential for rehabilitation, the fact that defendant's violent crime convictions took place when he was 18 years old, that defendant had begun to gain an insight into his disease and that defendant seemed to be a spiritual man. We find that even assuming the oral amendment of defendant's PSI to include a fourth DUI conviction was not adequately demonstrated, we reject defendant's claim that such misconception rises to the level of plain error in light of the record here.

¶ 11 Defendant next contends that his three-year term of MSR is void and must be reduced because the trial court improperly applied the three-year period of MSR associated with Class X felonies, instead of the two-year period of MSR associated with the underlying offense of either a Class 1, or in the alternative, Class 2 felony. We disagree.

¶ 12 Both Class 1 and Class 2 offenses receive respective MSR periods of two years, while Class X offenses receive three years. 730 ILCS 5/5-8-1(d)(2)(West 2010); 730 ILCS 5/5-8-

1(d)(1) (West 2010). We recently held that, when a defendant qualifies for Class X sentencing because of his background but was actually convicted of a lesser-class offense, the three-year Class X MSR period is necessarily imposed. *People v. Brisco*, 2012 IL App (1st) 101612, ¶60. In *Brisco*, we declined to adopt an argument by a defendant convicted of a Class 2 felony but sentenced as a Class X offender that *People v. Pullen*, 192 Ill. 2d 36 (2000) was controlling, noting that *Pullen* "does not disturb the conclusion that because the MSR term is part of the sentence, an individual subject to Class X sentencing for whatever reason will be subject to the Class X MSR period." *Brisco*, 2012 IL App (1st) at ¶62. Defendant acknowledges that this court has rejected his position in numerous prior decisions. See, e.g., *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶49 ; *People v. Rutledge*, 409 Ill. App. 3d. 22, 26 (2011). We adhere to our precedent.

¶ 13 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 14 Affirmed.